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The mountain town of Corcora, Pe-
ru, was wiped out by an earthquake.
Many lives were lost.

The Long Island Lighting Company
of Long Island has increased its cap-
ital from \$300,000 to \$1,000,000.

DELAY IN HANDLING TERRITORIAL BONDS WON'T INJURE TERRITORY

Dillon, Thompson & Clay's Letter Shows Governor's Course
Has Been Advantageous—Agree With Executive That De-
livery of Bonds is Simply Clerical Act—Enactment of Leg-
islation Suggested Will Provide for Future—Full Corres-
pondence Published

In view of the importance of the territorial bond issue situation, the Star-Bulletin publishes below the full correspondence between Governor Pinkham and Dillon, Thompson & Clay, the noted bond attorneys of New York who pass upon Hawaii's issues as well as those of many other com-
monwealths. There is also published Attorney General Stainback's opinion and the proposed legislative act that will safeguard the issuance of the bonds.

The correspondence shows that the delay in issuing the bonds will not injure the territory; further, that the New York firm agrees with the governor and attorney general on the point that the actual physical delivery of the bonds is simply a clerical act on the part of the territorial treasurer and that the title to the bonds passes to the purchasers regardless of a change in the office of the territorial treasurer. The question arose when Territorial Treasurer Conkling resigned from office before the delivery of bonds negotiated while he was treasurer.

MEMORANDUM

The administration accepts full responsibility for its position and action relative to the bond issues of the Territory of Hawaii.

It does not accept a point of view not sustained by statute or court decision.

It does not accept an individual in place of a legal entity holding office legally.

It does not accept a point of view that places the routine, emergency or fixed business of the Territory in peril through the acts of God, time, distance, or exigencies of health or conduct that may occur to or by a single individual, or that might require unlimited repetition of the physical acts of printing, signing and registering, confusing every date of issue, calculation and redemption.

The administration will, however, promptly and cheerfully urge legislation that will satisfy the scruples of the New York counsellors at law, Messrs. Dillon, Thompson and Clay.

November 2, 1914.
Messrs. Dillon, Thompson and Clay,
No. 16 Dey Street,
New York City, N. Y.

Dear Sirs:—Hon. D. L. Conkling, Treasurer of the Territory of Hawaii, informed me on October 30th that he had a verbal opinion from you that all territorial bonds would be valueless unless they were delivered to purchasers by him personally, with some rather, to me, not clear remarks relative to signing them at the time of delivery.

The exact state of the case is as follows:

We had local Honolulu bids for \$600,000 of the issue at par, which were accepted. Messrs. Bishop & Co., Bankers, on October 22nd, came to the Treasury and deposited the cash and accrued interest on the \$500,000.00 bonds subscribed for by them, thus paying in full for the bonds, although the Treasury will be unable to deliver the bonds until the \$750,000.00 in bonds now in transit from the United States Mortgage and Trust Company, fiscal agents of the Territory, arrive. The delivery now constitutes, it seems to us and Bishop & Co., simply a formal clerical act and in no way involves the legality of the bonds. Mr. Conkling, as Treasurer, and Henry C. Hapah, as Registrar, signed these bonds as of September 15, 1914, thus completing the date and form of issue, leaving only the sale and delivery of the bonds, as opportunity offered, to complete the intent of the Territory to bond itself for the authorized \$1,430,000.00.

Mr. Conkling retired Oct. 31st and Charles J. McCarthy succeeded him as Territorial Treasurer.

It will devolve on the latter to adjust accrued interest, collect the price bid for bonds and above accrued interest, and deliver the balance of the bonds, to wit, \$100,000.00.

If there is any irregularity in the above procedure, kindly cable me.

Our laws permit the sale of bonds at private sale, provided the price is above that of the last public sale, be the advance never so slight.

It is our purpose to offer at private sale \$689,200.06 of these bonds on the basis of \$1000 10/100 for each \$1000.00 bond plus accrued interest from the fixed date of the bonds, to wit, September 15, 1914.

I apprehend the law does not regard the individual who happens to hold the office but the actual legal incumbent of the office of Treasurer of the Territory of Hawaii.

If the above contention is incorrect, kindly wire me.

I inclose copies of the cablegrams passed from this office and your own.

Very respectfully,
L. E. PINKHAM,
Governor of Hawaii.

New York, November 16, 1914.
Hon. Lucius E. Pinkham,
Governor,
Honolulu, H. I.

Dear Sir:—

TERRITORY OF HAWAII PUBLIC IMPROVEMENT BONDS, \$750,000.

We are in receipt of your letter of November 2, 1914, relative to the above bonds, and particularly to \$60,000 of these bonds which were sold at par to local Honolulu bidders.

We note your statement of the facts as to the purchase of these bonds, and that on October 22, 1914, the purchase price of \$50,000 thereof was paid into the Treasury. We agree with you as to the \$50,000 so paid for, that the actual physical delivery to the purchasers constitutes simply a clerical act and that the title to the bonds in the condition in which they were at the date of payment passed to the purchasers.

We note your statement as to the remaining \$10,800 of the bonds for which bids were received from local Honolulu parties that will devolve upon Mr. Charles J. McCarthy, the present Territorial Treasurer to accept accrued interest, collect the price bid for the bonds and deliver the balance of these bonds, viz.: \$10,800. We

do not think that it is safe to follow this course until the statute has been passed, a draft of which we prepared and handed to Mr. Conkling on October 22, 1914, and which we are advised by Mr. McCarthy has been handed by Mr. Conkling to Mr. McCarthy. We therefore accordingly today sent you a cable reading as follows: "Further deliveries Territorial Bonds should not be made until statute passed. We write."

We further note the course which you propose to follow with reference to the sale of the bonds at private sale. We think that it would be well in the interests of the Territory if you would postpone any further sale of these bonds until after an act has been passed by the Legislature and approved by you as Governor, in the form enclosed, (being the same as that handed to Mr. Conkling), relative to the signatures thereon. This act will remove all question as to the regularity of the execution of the bonds and will enable us to give our opinion relative to future deliveries without regard to the time when they may happen to have been paid for.

We wrote you on October 31, 1914, relative to the rule as to the execution of these securities and you will see from that letter that the only safe rule to follow is either that the securities should be signed by the persons who are in office at the time of the delivery and payment or that a statute should be passed recognizing the validity of official signatures although there may be a change in the incumbency of the office.

We might add that present indications are that any delay will not be to the prejudice of the territory as the bond market is daily improving. We await your further advice, and remain,

Very truly yours,
DILLON, THOMPSON & CLAY.

OPINION NO. 396.
ATTORNEY GENERAL—TERRITORY OF HAWAII.

Honolulu, December 19, 1914.
C. J. McCarthy, Esq.,
Treasurer, Territory of Hawaii,
Honolulu.

Dear Sir:—In reply to your request as to whether the issue of bonds signed by Mr. Conkling when he was Treasurer, and dated September 15, 1914, can be sold and delivered by you who became Treasurer on October 31st, 1914, I beg to state that, in my opinion, there is no legal objection to the sale and delivery of these bonds by you.

I have examined the opinion of Messrs. Dillon, Thompson and Clay and though it may seem presumptuous for me to say so, it appears to me to be based upon neither reason nor authority. Our statutes provide that the Treasurer, with the approval of the Governor, may issue, from time to time, bonds, and sell the whole or any part of each issue; that the bonds shall be lithographed or steel engraved and shall be signed by the Treasurer and by the Registrar of Public Accounts, and be sealed with the seal of the Office of the Treasurer, and that the interest coupons shall bear a lithographed or engraved fac-simile of the signature of the Treasurer of the Territory.

In the present case, when Mr. Conkling signed the bonds and had a fac-simile of his signature engraved upon the coupons, he was clearly acting within his powers and, in fact, at that time, no one else could act for the Territory in that capacity. Does the change in the occupancy of the office require the proceeding to issue bonds to be begun all over again, or can the present occupant go ahead and complete the issue begun by his predecessor? The very nature of a Government (or a Corporation) which has a continuous existence makes the personnel of the officer immaterial; the law looks to the acts of the officer rather than to the particular occupant of the office. The reasoning advanced in the opinion of Messrs. Dillon, Thompson and Clay that a bond is not

THIS LAST A A LONG WEEK FOR SOME

The week intervening between Christmas and New Year's has seemed unusually long, despite the holiday season and the accompanying entertainments, etc., at least this is the claim of a good many who have anxiously awaited the arrival of the "good ship" from the coast which would bring that much demanded assortment of the famous Orange Blossom candles.

Notwithstanding the fact that the shipment received just prior to Xmas was the largest yet to arrive in this city, there was not a box left Xmas day.

"Be that as it may," we lovers of sweets, the Matsonia, due to arrive early tomorrow (Tuesday) morning, has aboard, consigned to the Honolulu Drug Co., another large and choice assortment; then you "young bloods" can well make peace with the fair damsel of your choice.—Adv.

complete before delivery and therefore the Treasurer who signs the bonds is the only one who can deliver them is not tenable. It is true a bond is not binding or complete until delivery but the question is not when the bond becomes the obligation of the Territory but whether the mechanical and ministerial acts in connection with the issue of the bonds have been performed. Clearly, Messrs. Dillon, Thompson and Clay cannot mean that a complete bond must be signed by the Treasurer or that his signature completes the bond as the signing is always prior to delivery whether the delivery be by the signer or his successor. The only question is whether you succeed to all the powers, rights and obligations of your predecessor, and whether his official acts (and there can be no question but that when he acted Mr. Conkling was acting officially) endure to you, now the official treasurer.

As stated by Messrs. Dillon, Thompson and Clay, there is no authoritative decision upon the question of whether bonds signed by a person who was in office at the time he signed but who ceased to be such officer prior to the delivery of the bonds to the Treasurer, are valid. The case of Weyauyega vs. Ayling, 99 S. 112, is somewhat in point. In that case, bonds, bearing date July 1st, purported to be signed by the Chairman of the Board of Supervisors and the Town Clerk, but the person signing as Town Clerk did not sign until July 13, at which time he had ceased to be Town Clerk. The Court held the bonds good on the presumption that they had been delivered with the consent of the Clerk then in office. That is a more extreme case than delivery of the present bonds by you will be, if Mr. Conkling, falsely dating the bonds, had signed them after he went out of office, and you had sold and delivered them, the case would be analogous. It is true the decision in Weyauyega vs. Ayling is on the ground of an estoppel against a bona fide purchaser for value and also on the ground that the Clerk in office adopted the signature of the former Clerk by assisting in or consenting to the delivery of the bonds by the supervisors. The facts in the case of Nautic Savings Bank vs. Town of Douglas, 5111 App 579, were similar to those in the present case and the bonds were held good but in that case also, a bona fide purchaser was involved. There are many cases holding that bonds must be signed by an officer who was in office when they were signed. An example is Coler vs. City of Cleburne 131 U. S. 173, which holds that bonds signed by a person who was not in office at the time he signed but who had been in office at the date appearing upon the face of the bonds are invalid. Such decisions are clearly correct, as a person who has ceased to hold office cannot act for the Government by falsely dating the instrument signed by him, but such is not the present case, for, as shown above, when Mr. Conkling signed the bonds he was then treasurer. It is to be noticed also in the case of Coler vs. Cleburne,—"that the person who was mayor of the city at the time the bonds were signed took no part in signing, delivering, or issuing them, that they were not complete in form when they were issued because they were not signed by the then mayor and it was only by a false date that they were then apparently complete in form, hence the present case is not like Weyauyega vs. Ayling." Implying that if the real mayor had delivered the bonds, the case would be like Weyauyega vs. Ayling, and the bonds good. Judge Dillon, in his excellent work upon Municipal Corporations states that "when the statutes specify officers by whom the bonds shall be signed, they must be executed by the persons who hold the prescribed office at the time when the bonds were actually signed and probably also at the time of the actual delivery" but there are no decisions to support the latter part of his statement and I am of the opinion that what authority there is would indicate otherwise.

Though there may be no legal objection to your selling these bonds, there is a practical side to this question that should not be overlooked. The opinion of Messrs. Dillon, Thompson and Clay upon Municipal and Governmental Bonds is probably more widely sought and acted upon than that of any other single firm in the United States and even though the opinion may be based upon an excess of caution, yet it cannot be ignored when you seek to sell bonds in New York or other markets.

Therefore, their suggestion that the Legislature of Hawaii, at its next session, should pass a statute declaring that when any bonds of the Territory had been signed by persons in office at the date of signing, such bonds shall be valid, though such officers cease to hold office before the date of sale, should be called to the attention of the Legislature.

Very respectfully,
L. E. PINKHAM,
Governor of Hawaii.

BOCKUS READY TO OUTLINE HIS PLAN FOR PIER

Declares It Will Not Interfere
With Waikiki Bathing
or Surfing

"There is not the slightest intention on the part of anyone to interfere with surfing or bathing at Waikiki with an amusement pier," said Charles G. Bockus today, discussing his proposal of such a pier and its status before the board of harbor commissioners. The board meets tomorrow at 9:30 o'clock in the Executive building, and Bockus said today that he would be present and prepared to outline his project if it were desired that he do so.

The attorney general is to have an opinion ready as to whether Chairman Forbes of the harbor board or the board itself has jurisdiction in considering the application to build the pier. This will also settle the point of whether the federal government has an interest in the matter.

Discussion of the project proper and can be expected at the board meeting tomorrow. Mr. Bockus said today that the pier on which the pier is projected will not in any way hurt Waikiki as a bathing and surfing resort.

"I have no doubt that the Legislature will pass such an act and thus remove every possible ground for questioning the legality of the bonds that you may sell."

Yours very truly,
I. M. STAINBACK,
Attorney General.

December 23, 1914.
Messrs. Dillon, Thompson and Clay,
Attorneys and Counsellors at Law,
No. 195 Broadway,
New York, N. Y.

Gentlemen:—Owing to the delay in securing the opinion of the Attorney General of the Territory of Hawaii, I have been unable to reply heretofore to your communication of November 16, 1914.

Your advice will be followed and the proposed act entitled "An Act in Relation to the signing and execution of Bonds of the Territory of Hawaii," as drafted by you, will be presented and, I presume, acted on at once by the Legislature at its assembling in February.

I leave the discussion as to the points of view with the Attorney General, although I have a firm belief our procedure is sound, and agree with him.

Very respectfully,
L. E. PINKHAM,
Governor of Hawaii.

PROPOSED ACT.
AN ACT IN RELATION TO THE
SIGNING AND EXECUTION OF
BONDS OF THE TERRITORY OF
HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. When, pursuant to statutory authority duly enacted, bonds of the Territory of Hawaii have been or shall hereafter be prepared and signed by the Treasurer of the Territory and by the Registrar of Public Accounts in office at the time of such signing, the signatures of such Treasurer and Registrar shall be valid and sufficient for all purposes and shall have the same effect as if the persons so officially signing such bonds had remained in office until the delivery of the same to the purchasers although the term of office of such persons or either of them may have expired or they may otherwise have ceased to be such officers before such delivery.

SECTION 2. This Act shall take effect immediately.

Although only two votes were cast for the Democratic nomination for alderman in one ward in Newton, Mass., a recount has been demanded.

Officials of the Savannah Clearing House Association announced that the original plan to subscribe \$2,500,000 to the cotton pool had been abandoned.

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